

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

**In re: Lawrence Leonard Thomas and
Yolanda Elizabeth Small-Thomas
Debtors**

Case No. 14-70630-FJS

Chapter 13

**Lawrence Leonard Thomas
Yolanda Elizabeth Small-Thomas,**

Plaintiffs,

v.

Adv. Pro. No. 14-07057-FJS

**Wells Fargo Bank, N.A.,
AND
Samuel I. White, P.C., Trustee**

Defendants.

Order on Complaint

This matter comes before the Court upon the Complaint filed by Lawrence Leonard Thomas and Yolanda Elizabeth Small-Thomas ("Debtors") against Wells Fargo Bank, N.A. ("Wells Fargo") and Samuel I. White, P.C., Trustee ("Samuel White") (collectively the "Defendants").

1. The replacement value of the Debtors' real property located at 2101 Kanturk Court, Virginia Beach, VA 23456 (the "Real Property"), determined by appraisal, is \$276,500.00.

2. Wells Fargo is the holder of a deed of trust which is a first-position lien on the Real Property pursuant to a deed of trust in the original amount of \$278,400.00 ("the First Deed of Trust"). The First Deed of Trust is dated April 28, 2006, and recorded in

Barry W. Spear (VSB# 39152)
Sarah Ramage Clarson (VSB #78953)
Boleman Law Firm, P.C.
272 Bendix Road, Suite 130
Virginia Beach, VA 23452
Phone: (757) 825-5577
Facsimile: (804) 358-8704
Counsel for Debtor/ Plaintiff

the Circuit Court Clerk's Office for the City of Virginia Beach, Virginia, on May 25, 2006, as Instrument Number 20060525000795920.

3. The balance owed to "first lien-holder" Wells Fargo and secured by its said deed of trust as of the Petition Date was \$285,103.91.

4. Wells Fargo is the holder of a second-position lien on the Real Property pursuant to a deed of trust granted by Debtors ("the Second Deed of Trust") in the original amount of \$51,600.00 ("the Second Deed of Trust"). The Second Deed of Trust is dated April 28, 2006, and was recorded on May 25, 2006, in the Clerk's Office for the Circuit Court of the City of Virginia Beach, Virginia, as Instrument Number 20060525000795930.

5. The pay-off on the indebtedness owed to Wells Fargo under the Second Deed of Trust as of the Petition Date was \$52,259.34.

6. Wells Fargo's First Deed of Trust is superior in lien position to Wells Fargo's Second Deed of Trust.

7. The Debtors' claims are such that it is not necessary to take an account of or to determine the amount of damages or to make an investigation of any other matter.

8. Wells Fargo failed to plead or otherwise defend within thirty (30) days of the issuance of the summons. Counsel for Samuel I. White. P.C., Trustee filed an Answer to the Complaint on July 10, 2014.

9. On August 15, 2014, the Debtors filed and served a Notice and Motion for Default Judgment as to Wells Fargo.

10. On August 27, 2014, the Debtors filed and served the Notice of Hearing for their Motion for Default Judgment on Wells Fargo.

11. On September 23, 2014 this Court granted the relief sought in the Debtor's Complaint.

It is accordingly, hereby,

ORDERED that, upon the Debtors' successful completion of their Chapter 13 plan, Wells Fargo's second position deed of trust, recorded in the Clerk's Office for the City of Virginia Beach, Virginia, as Instrument Number 20060525000795930 shall be released, and the interests of Samuel White as Trustee are thereby extinguished; and it is further

ORDERED that the lien avoided by this Order (the "Lien") shall remain in effect unless and until the Debtors complete performance of their Chapter 13 plan. If the case is dismissed or converted without completion of the plan, the Lien is not avoided; and it is further

ORDERED that this Order and any corresponding release of the Lien shall not be recorded in the applicable state Circuit Court unless and until the conditions of the preceding paragraphs are met; and it is further

Notwithstanding the above, the debt secured by the Lien shall be treated as unsecured for the purpose of distribution by the Chapter 13 Trustee in this case; and it is further

ORDERED that, pursuant to 11 U.S.C. § 506, the value of Wells Fargo's interest in the Real Property pursuant to its deed of trust is \$0.00 and, accordingly Well's Fargo's claim shall not be treated as an allowed secured claim; and it is further

ORDERED that Wells Fargo's lien on the Real Property is hereby determined to be void, said real property being more particularly described as recorded on May 26,

2006 in the Clerk's Office for the City of Virginia Beach, Virginia, as Instrument Number 20060525000795930 as:

All that certain lot, piece or parcel of land, with the buildings and improvements thereon, lying, situate and being in the City of Virginia Beach, Virginia, being known, numbered and designated as Lot 116, as shown on that certain plat entitled "SUBDIVISION OF NEW CASTLE SECTION FOUR KEMPSVILLE BOROUGH - VIRGINIA BEACH, VIRGINIA", which said plat is duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Map Book 252 at pages 32 through 35, inclusive.

ORDERED that the Clerk shall mail copies of this Order, once entered, to all parties on the attached service list.

/s/ Frank J. Santoro

Dated: Dec 18 2014

United States Bankruptcy Judge

Entered: 12/22/2014

I ASK FOR THIS:

/s/ Sarah Ramage Clarson

Barry W. Spear (VSB# 39152)
Sarah Ramage Clarson (VSB #78953)
Boleman Law Firm, P.C.
272 Bendix Road, Suite 130
Virginia Beach, VA 23452
Phone: (757) 313-3000
Facsimile: (804) 358-8704
Counsel for Debtor/ Plaintiff

Seen and No Objection:

/s/ D. Carol Sasser, Esq.
D. Carol Sasser, Esq.
Counsel for Samuel I. White, P.C., Trustee

Seen and No Objection:

/s/ R. Clinton Stackhouse, Jr.
R. Clinton Stackhouse, Jr.
Chapter 13 Trustee

CERTIFICATION

Pursuant to Local Rule 9022-1(c), I hereby certify that all necessary parties have endorsed the above order and that this proposed has been served upon all defendants on December 15, 2014.

/s/ Sarah Ramage Clarson
Sarah Ramage Clarson
Counsel for Debtor/Plaintiffs

Parties to Receive Copies

Boleman Law Firm, P.C.
272 Bendix Road Suite 130
Virginia Beach, VA 23452

Lawrence and Yolanda Thomas
2101 Kanturk Ct.
Virginia Beach, VA 23462

Wells Fargo Bank, N.A.
C/o John G. Stumpf, CEO
101 N. Phillips Ave.
Sioux Falls, SD 57104

Wells Fargo Bank, N.A.
C/o Corporation Service Company, Registered Agent
Bank of America Center, 16th Floor
1111 E. Main St.
Richmond, VA 23219

Samuel I. White, P.C., Trustee
C/o D. Carol Sasser, Esq.
5040 Corporate Woods Drive
Virginia Beach, VA 23462